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GOVERNMENT OF GOA

Department of Finance

Office of the Commissioner of Commercial Taxes

No. CCT/26-4/2017-18/E/1872

Circular

(No. 12/2021-22-GST)

Subject: Clarification on doubts related to scope of "Intermediary"-reg.

Representations have been received citing ambiguity caused in interpretation of the scope of "Intermediary services" in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the undersigned, in exercise of its powers conferred by Section 168 of the Goa Goods and Services Tax Act, 2017 (hereinafter referred to as "Goa GST Act"), hereby clarifies the issues in succeeding paragraphs.

2. Scope of Intermediary services

2.1 'Intermediary' has been defined in the sub-section (13) of Section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under:-

"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

2.2 The concept of 'intermediary' was borrowed in GST from the Service Tax Regime. The definition of

'intermediary' in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide Notification No. 28/2012-ST, dated 20-6-2012 was as follows:

"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;"

2.3 From the perusal of the definition of "intermediary" under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-a-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

3. *Primary Requirements for intermediary services*
The concept of intermediary services, as defined above, requires some basic pre-requisites, which are discussed below:

3.1 *Minimum of Three Parties*: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, not be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main

supply") between two or more other persons and, does not himself provide the main supply.

3.2 Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of "intermediary" itself provides that intermediary service provider *means a broker, an agent or any other person, by whatever name called*. This part of the definition is not inclusive but uses the expression "means" and does not expand the definition by any known expression of expansion such as "and includes". The use of the expression "arranges or facilitates" in the definition of "intermediary" suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

3.4 Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary *"does not include a person who supplies such goods or services or both or securities on his own account"*. Use of word *"such"* in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of "intermediary".

3.5 Sub-contracting for a service is not an intermediary service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the

main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, Annual Maintenance of tools and machinery to 'B'. 'A' sub-contracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i. e. to 'B' on behalf of 'A'. Though 'C' is dealing with the customer of 'A', but 'C' is providing main supply of Annual Maintenance Service to 'A' on his own account, i.e. on principal to principal basis. In this case, 'A' is providing supply of Annual Maintenance Service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' in this case will not be considered as an intermediary.

3.6 The specific provision of place of supply of 'intermediary services' under Section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

4. Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

Illustration 1

'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 2

'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which "C" may have

to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

Illustration 3

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of Section 2 of the IGST Act.

Illustrations 4

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing/processing their queries/complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.

5. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of Section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the undersigned.

Hemant Kumar, IAS, Commissioner State Tax, Goa.
Panaji, 26th October, 2021.

Note: Similar circular is issued under Central Goods and Services Tax Act, 2017 by the GST Policy wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, GOI, New Delhi vide Circular No. 159/15/2021-GST dated 20th September, 2021.

No. CCT/26-4/2017-18/E/1873

Circular

(No. 11/2021-22-GST)

Subject: Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 38/1/2017-Fin (R&C)(216)/1886 dated 27th September, 2021- Reg.

Vide Circular No. 1/2021-22 - GST, dated 17th June, 2021, detailed guidelines for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under Section 30 of the Goa Goods and Services Tax Act, 2017 (hereinafter referred to as "the Goa GST Act/said Act") and Rule 23 of the Goa Goods and Services Tax Rules, 2017 (hereinafter referred to as "the Goa GST Rules") have been specified, till the time an independent functionality for extension of time limit for applying in FORM GST REG-21 is developed on the GSTN portal. It may be noted that Notification No. 38/1/2017-Fin(R&C)(199)/1408, dated 25th May, 2021, as amended, had, inter-alia, extended the date of filing of application for revocation of cancellation of registration till 30th June, 2021, where the due date of filing of application was falling between 15th April, 2021 to 29th June, 2021. Government has now issued Notification No. 38/1/2017-Fin (R&C)(216)/1886 dated 27th September, 2021 (hereinafter referred to as "the said notification") under Section 168A of the said Act to extend the timelines for filing of application for revocation of cancellation of registration to 30th September, 2021, where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021. This extension is applicable for those cases where registrations have been cancelled under Clause (b) or Clause (c) of sub-section (2) of Section 29 of the said Act.

2. In order to ensure uniformity in the implementation of the said notification across field formations, the undersigned, in exercise of its powers

conferred by Section 168 of the said Act, hereby clarifies the issues relating to the extension of timelines for application for revocation of cancellation of registration as under:

3. Applications covered under the scope of the said notification.

3.1. The said notification specifies that where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, the time limit for filing of application for revocation of cancellation of registration is extended to 30th September, 2021. Accordingly, it is clarified that the benefit of said notification is extended to all the cases where cancellation of registration has been done under clause (b) or clause (c) of sub-section (2) of Section 29 of the Goa GST Act, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021. It is further clarified that the benefit of notification would be applicable in those cases also where the application for revocation of cancellation of registration is either pending with the proper officer or has already been rejected by the proper officer. It is further clarified that the benefit of notification would also be available in those cases which are pending with the appellate authority or which have been rejected by the appellate authority. In other words, the date for filing application for revocation of cancellation of registration in all cases, where registration has been cancelled under clause (b) or clause (c) of sub-section (2) of Section 29 of Goa GST Act, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, is extended to 30th September, 2021, irrespective of the status of such applications. As explained in this para, the said notification would be applicable in the following manner:

(i) application for revocation of cancellation of registration has not been filed by the taxpayer-

In such cases, the applications for revocation can be filed upto the extended timelines as provided vide the said notification. Such cases also cover those instances where an appeal was filed against order of cancellation of registration and the appeal had been rejected.

(ii) application for revocation of cancellation of registration has already been filed and which are pending with the proper officer-

In such cases, the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

(iii) application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection-

In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

(iv) application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority-

In such cases, appellate authorities shall take the cognizance of the said notification for extension of timelines while deciding the appeal.

(v) application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer-

In such cases, tax payer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

4. It may be recalled that, with effect from 01-01-2021, proviso to sub-section (1) of Section 30 of the Goa GST Act has been inserted which provides for extension of time for filing application for revocation of cancellation of registration by 30 days by Additional Commissioner and by another 30 days by the Commissioner. Doubts have been raised whether the said notification has extended the due date in respect of initial period of 30 days for filing the application (in cases where registration has been cancelled under clause (b) or clause (c) of sub-section (2) of Section 29 of Goa GST Act, 2017) under sub-section (1) of Section 30 of the Goa GST Act or whether the due date of filing applications for renovation of registration can be extended further for the period of 60 days (30+30) by the Additional Commissioner/Commissioner, as the case may be, beyond the extended date of 30-09-2021. It is clarified that:

(i) where the thirty days' time limit falls between 1st March, 2020 to 31st December, 2020, there is no provision available to extend the said time period of 30 days under Section 30 of the Goa GST Act. For such cases, pursuant to the said notification, the time limit to apply for revocation of cancellation of registration stands extended up to 30th September, 2021 only; and

(ii) where the time period of thirty days since cancellation of registration has not lapsed as on 1st January, 2021 or where the registration has been cancelled on or after 1st January, 2021, the time limit for applying for revocation of cancellation of registration shall stand extended as follows:

(a) Where the time period of 90 days (initial 30 days and extension of (30+30 days) since cancellation of registration has elapsed by 31-08-2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September, 2021, without any further extension of time by Additional Commissioner/Commissioner.

(b) Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by 31-08-2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September, 2021, with the extension of timelines by another 30 days beyond 30-09-2021 by the Commissioner, on being satisfied, as per proviso to sub-section (1) of Section 30 of the Goa GST Act.

(c) Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31-08-2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September, 2021, with the extension of timelines by another 30 days beyond 30-09-2021 by the Additional Commissioner and another 30 days by the Commissioner, on being satisfied, as per proviso to sub-section (1) of Section 30 of the Goa GST Act.

3. Difficulty, if any, in implementation of this Circular may be please be brought to the notice of the undersigned.

Hemant Kumar, IAS, Commissioner State Tax, Goa.
Panaji, 26th October, 2021.

Note: Similar circular is issued under Central Goods and Services Tax Act, 2017 by the GST Policy wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, GOI, New Delhi vide Circular No. 158//14/2021-GST dated 6th September, 2021.

No. CCT/26-4/2017-18/E/1874

Circular

(No. 13/2021-22-GST)

Subject: Clarification in respect of certain GST related issues – reg.

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues pertaining to GST laws. The issues have been examined. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the undersigned, in exercise of its powers conferred by Section 168 of the Goa Goods and Services Tax Act, 2017 (hereinafter referred to as "Goa GST Act"), hereby clarifies each of these issues as under:

Sr. No.	Issue	Classification
1	2	3
1.	Section 16 (4), as amended with effect from 01-01-2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under Section 39 for month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. Doubts has been raised seeking following clarification: 1. which of the following dates are relevant to determine the 'Financial year' for the purpose of Section 16(4):	1. With effect from 01-01-2021, Section 16(4) of the Goa GST Act, 2017 was amended vide The Goa Goods and Services Tax (Second Amendment) Act, 2020 (Goa Act 13 of 2020), so as to delink the date of issuance of debit note from the date of issuance of the underlying Invoice for purposes of availing input tax credit. The amendment made is shown as Below: <i>"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under Section 39 for the month of September following the end of financial year to which such invoice or invoice relating</i>

1	2	3
	(a) date of issuance of debit note, or (b) date of issuance of underlying invoice.	<i>to such debit note pertains or furnishing of the the relevant annual return, whichever is earlier."</i>
2.	Whether any availment of input tax credit, on or after 01-01-2021, in respect of debit notes issued either prior to or after 01-01-2021, will be governed by the provisions of the amended Section 16 (4), or the amended provision will be applicable only in respect of the debit notes issued after 01-01-2021?	<p>As can be seen, the words "invoice relating to such" were omitted w.e.f. 01-01-2021.</p> <p>2. The intent of Law as specified in the Memorandum explaining the Goa Goods and Services Tax (Second Amendment) Bill, 2020 (Bill No. 19 of 2020) states that "<i>(iii) amend sub-section (4) of Section 16 of the said Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.</i>"</p> <p>3. Accordingly, it is clarified that:</p> <p>(a) w.e.f. 01-01-2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of Section 16 (4) of the Goa GST Act.</p> <p>(b) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01-01-2021. Accordingly, for availment of ITC on or after 01-01-2021 in respect of debit notes issued either prior to or after 01-01-2021, the eligibility for availment of ITC will be governed by the amended provision of Section 16(4), whereas any ITC availed prior to 01-01-2021, in respect of debit notes, shall be governed under the provisions of Section 16(4), as it existed before the said amendment on 01-01-2021.</p> <p><i>Illustration 1.</i> A debit note dated 07-07-2021 is issued in respect of the original invoice dated 16-03-2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of ITC in respect of the said invoice in terms of Section 16(4) of the Goa GST shall be 2021. However debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of Section 16(4) of the Goa GST Act.</p> <p><i>Illustration 2.</i> A debit note has been issued on 10-11-2020 in respect an invoice dated 15-07-2019. relevant financial year for availment of input tax credit on the said debit note, on or after 01-01-2021,</p>

1	2	3
		will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.
2.	Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under Rule 48 (4) of the Goa GST Rules, 2017 (i.e. in cases of e-invoice)	<p>1. Rule 138A (1) of the Goa GST Rules, 2017 <i>inter-alia</i>, provides that the person in charge of a conveyance shall carry— (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.</p> <p>2. Further, rule 138A (2) of Goa GST Rules, after being amended vide Notification No. 38/1/2017-Fin (R & C) (176)/620 dated 14-10-2020, states that “<i>In case, invoice is issued in the manner prescribed under sub-rule (4) of Rule 48, the Quick Reference (QR) code having an embedded invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice</i>”.</p> <p>3. A conjoint reading of Rules 138A (1) and 138A (2) of Goa GST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised Rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.</p> <p>4. Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under Rule 48 (4) of the Goa GST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.</p>

1	2	3
3. Whether the second proviso to Section 54 (3) of CGST/SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty		<p>1. The term 'subjected to export duty' used in second proviso to Section 54 (3) of the Goa GST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.</p> <p>2. Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under Section 54 (3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the second proviso to Section 54 (3) of the Goa GST Act for the purpose of availment of refund of accumulated ITC.</p>

2. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the undersigned.

Hemant Kumar, IAS, Commissioner State Tax, Goa.

Panaji, 26th October, 2021.

Note: Similar circular is issued under Central Goods and Services Tax Act, 2017 by the GST Policy wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, GOI, New Delhi vide Circular No. 160/16/2021-GST dated 20th September, 2021.

No. CCT/26-4/2017-18/E/1875
Circular

(No. 14/2021-22-GST)

Subject: Clarification relating to export of services-condition (v) of Section 2 (6) of the IGST Act, 2017-reg.

Various representations have been received citing ambiguity caused in interpretation of the Explanation 1 under Section 8 of the IGST Act, 2017 in relation to condition (v) of export of services as mentioned in sub-

section (6) of the Section 2 of the IGST Act, 2017. Doubts have been raised whether the supply of service by a subsidiary/sister concern/group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of sub-section (6) of Section 2 of IGST Act.

2. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the undersigned, in exercise of its powers conferred by Section 168 of the Goa Goods and Services Tax Act, 2017 (hereinafter referred to as "Goa GST Act"), hereby clarifies the issue in succeeding paragraphs.

Relevant legal provisions:

3.1 The export of services has been defined in sub-section (6) of the Section 2 of the IGST Act, 2017 as under:

(6) "export of services" means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8;

3.2 Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:

Explanation 1.— For the purposes of this Act, Where a person has,—

- (i) *an establishment in India and any other establishment outside India;*
- (ii) *an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
- (iii) *an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.*

As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

3.3 Reference is also invited to the Explanation 2 of Section 8 of IGST Act, which is reproduced below:

"Explanation 2. — A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory."

3.4 Reference is also invited to the definition of "person" as provided under Goa GST Act, 2017, made applicable to IGST Act vide Section 2(24) of IGST Act, 2017. "Person" has been defined under sub-section (84) of the Section 2 of the Goa GST Act, 2017, as under:

(84) "person" includes—

- (a) *an individual;*
- (b) *a Hindu Undivided Family;*
- (c) *a company;*
- (d) *a firm;*
- (e) *a Limited Liability Partnership;*
- (f) *an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (g) *any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of Section 2 of the Companies Act, 2013;*
- (h) *any body corporate incorporated by or under the laws of a country outside India;*
- (i) *a Co-operative society registered under any law relating to co-operative societies;*
- j) *a local authority;*
- (k) *Central Government or a State Government;*
- (l) *society as defined under the Societies Registration Act, 1860;*
- (m) *trust; and*
- (n) *every artificial juridical person, not falling within any of the above;*

3.5. The definitions of company and foreign company have been provided under Section 2 of Companies Act, 2013, as under:

(20) "company" means a company incorporated under this Act or under any previous company law;

(42) "foreign company" means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Analysis of the issue:

4.1 Clause (v) of sub-section (6) of Section 2 of IGST Act, which defines "export of services", places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of Section 8 of IGST Act, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

4.2 Further, perusal of the Explanation 2 to Section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

4.3 In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of sub-section (6) of Section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

4.4 From the perusal of the definition of "person" under sub-section (84) of Section 2 of the Goa GST Act, 2017 and the definitions of "company" and "foreign company" under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate "Person" under the provisions of

Goa GST Act and accordingly, are separate legal entities. Thus, a subsidiary/sister concern/group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of Goa GST Act and accordingly, would be considered as a separate legal entity than the foreign company.

Clarification:

5.1 In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under Goa GST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in Section 8".

5.2 Therefore, supply of services by a subsidiary/sister concern/group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the Section 2 of the IGST Act, 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of Section 8 of IGST Act, 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of Section 8 of IGST Act, 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of Section 2 of IGST Act.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the undersigned.

Hemant Kumar, IAS, Commissioner State Tax, Goa.

Panaji, 26th October, 2021.

Note: Similar circular is issued under Central Goods and Services Tax Act, 2017 by the GST Policy wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, GOI, New Delhi vide Circular No. 161/17/2021-GST dated 20th September, 2021.

No. CCT/26-4/2017-18/E/1877

Circular

(No. 15/2021-22-GST)

Subject: Clarification in respect of refund of tax specified in Section 77(1) of the Goa GST Act and Section 19(1) of the IGST Act-reg.

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in Section 77(1) of the Goa Goods and Services Tax Act, 2017 (hereinafter referred to as "Goa GST Act") and Section 19(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the undersigned, in exercise of its powers conferred by Section 168 of the Goa GST Act, hereby clarifies the issues detailed hereunder:

2.1 Section 77 of the Goa GST Act, 2017 reads as follows:

"77. Tax wrongfully collected and paid to Central Government or State Government.— (1) A 'registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of Central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."

Section 19 of the IGST Act, 2017 reads as follows:

"19. Tax wrongfully collected and paid to Central Government or State Government. —(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid Central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter- State supply, shall not be required to pay any interest on the amount of integrated tax payable."

3. Interpretation of the term "subsequently held"

3.1 Doubts have been raised regarding the interpretation of the term "subsequently held" in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/assessment/audit/investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.

3.2 In this regard, it is clarified that the term "subsequently held" in Section 77 of Goa GST Act, 2017 or under Section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

4. The relevant date for claiming refund under Section 77 of the Goa GST Act/Section 19 of the IGST Act, 2017.

4.1 Section 77 of the Goa GST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under Section 77 of the Goa GST Act and Section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of Rule 89 of the Goa Goods and Services Tax Rules, 2017 (hereinafter referred to as "Goa GST Rules") vide Notification No. 38/1/2017-Fin(R&C)(217)/1937 dated 06-10-2021. The said sub-rule (1A) of Rule 89 of Goa GST Rules, 2017 reads as follows:

"(1A) Any person, claiming refund under Section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State

supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force."

4.2 The aforementioned amendment in the Rule 89 of Goa GST Rules, 2017 clarifies that the refund under Section 77 of Goa GST Act/Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of Notification No. 38/1/2017-Fin(R&C)(217)/1937 dated 06-10-2021, the refund application under Section 77 of the Goa GST Act/Section 19 of the IGST Act can be filed before the expiry of two years from the date of effectivity the said notification, i.e. from 24-09-2021.

4.3 Application of sub-rule (1A) of Rule 89 read with Section 77 of the Goa GST Act/Section 19 of the IGST Act is explained through following illustrations.

A tax payer "A" has issued the invoice dated 10-03-2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following Scenarios are explained hereunder:

Sl. No.	Scenario	Last date for filing the refund claim
1.	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on 10-05-2021	Since "A" has paid the tax in the correct head before issuance of Notification No. 38/1/2017-Fin (R&C)(217)/1937 dated 06-10-2021, the last date for filing refund application in FORM GST RFD-01 would be 23-09-2023 (two years from effective date of Notification).
2.	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on 10-11-2021 i.e. after issuance of Notification No. 38/1/2017-Fin(R&C)(217)/1937 dated 06-10-2021	Since "A" has paid the correct tax on 10-11-2021, in terms of Rule 89 (1A) of the Goa GST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09-11-2023 (two years from the date of payment of tax under the correct head i.e. integrated tax).
3.	Proper Officer or adjudication authority or Appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10-05-2019	Since "A" has paid the tax in the correct head before issuance of Notification No. 38/1/2017-Fin (R&C)(217)/1937 dated 06-10-2021, the last date for filing refund application in FORM GST RFD-01 would be 23-09-2023 (two years from effective date of Notification).
4.	Proper Officer or adjudication authority or Appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10-11-2022, i.e. after issuance of Notification No. 38/1/2017-Fin (R&C)(217)/1937 dated 06-10-2021	Since "A" has paid the correct tax on 10-11-2022, in terms of Rule 89 (1A) of the Goa GST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09-11-2024 (two years from the date of payment of tax under the correct head, i.e. integrated Tax).

The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the Goa GST Rules would be applicable for Section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST

and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of Notification No. 38/1/2017-Fin(R&C)(217)/1937 dated 06-10-2021, would also be dealt in accordance with the provisions of Rule 89 (1A) of the Goa GST Rules, 2017.

4.4 Refund under Section 77 of the Goa GST Act/Section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under Section 34 of the Goa GST Act in respect of the said transaction.

5. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the undersigned.

Hemant Kumar, IAS, Commissioner State Tax, Goa.

Panaji, 26th October, 2021.

Note: Similar circular is issued under Central Goods and Services Tax Act, 2017 by the GST Policy wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, GOI, New Delhi vide Circular No. 162/18/2021-GST dated 25th September, 2021.

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